

1 UNITED STATES DISTRICT COURT
2 CENTRAL DISTRICT OF CALIFORNIA
3 SOUTHERN DIVISION

4 STEVEN RUPP, et al.

5 Plaintiffs,

6 v.

7 XAVIER BECERRA, in his official
8 capacity as Attorney General of the
State of California

9 Defendant.

CASE NO. 8:17-cv-00746-JLS-JDE

**AMICUS BRIEF OF GIFFORDS LAW
CENTER TO PREVENT GUN
VIOLENCE**

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CORPORATE DISCLOSURE STATEMENT

Amicus curiae hereby certifies that it has no parent corporation. It has no stock, and therefore no publicly held corporation owns 10% or more of its stock.

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I. STATEMENT OF INTEREST

Amicus curiae Giffords Law Center to Prevent Gun Violence (“Giffords Law Center”) is a nonprofit policy organization dedicated to researching, writing, enacting, and defending laws and programs proven to reduce gun violence and save lives. The organization was founded in 1993 after a gun massacre at a San Francisco law firm and was renamed Giffords Law Center in October 2017 after joining forces with the gun-safety organization founded by former Congresswoman Gabrielle Giffords.

Today, Giffords Law Center provides free assistance and expertise to lawmakers, advocates, legal professionals, law enforcement officials, and citizens who seek to make their communities safer from gun violence. Its attorneys track and analyze firearm legislation, evaluate gun violence prevention research and policy proposals, and participate in Second Amendment litigation nationwide. Giffords Law Center has provided analysis as an amicus in numerous important firearm-related cases.¹

II. ARGUMENT

The assault rifles at issue in this case are semiautomatic versions of a military design first deployed on the battlefields of Vietnam. *See, e.g.,* Natasha Singer, *The Most Wanted Gun in America*, N.Y. Times, Feb. 2, 2013, available at <https://www.nytimes.com/2013/02/03/business/the-ar-15-the-most-wanted-gun-in-america.html>. Decades later, in an effort to create a bigger civilian market for semiautomatic rifles, gun makers ran “ads celebrating the rifle’s military connections, . . . lur[ing] a new and eager audience to weapons that, not long ago, few serious gun enthusiasts would buy.” *Id.* Those combat connections are not a relic—the semiautomatic assault rifles California regulates remain military-grade weapons. In fact, even today, the United States military calls semiautomatic fire the “most important firing technique during fast-moving, modern combat” and “the most accurate technique

¹ No party’s counsel authored this brief in whole or in part. No party or party’s counsel contributed money that was intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel contributed money that was intended to fund preparing or submitting the brief.

1 of placing a large volume of fire” on moving targets. Department of the Army, Rifle
2 Marksmanship: A Guide to M16- and M4-Series Weapons (2011), at 7-12.

3 The Roberti-Roos Assault Weapons Control Act (“AWCA”) of 1989 and its
4 subsequent iterations represent the considered and well-supported judgment of the
5 California legislature to enact a weapon-by-weapon and feature-by-feature restriction
6 that affects only a subset of semiautomatic rifles—those weapons most reminiscent of
7 those original military rifles that make them the firearm of choice for individuals seeking
8 to carry out mass shootings, drive-by shootings, and gang violence (“Regulated Assault
9 Rifles”). As the AWCA addresses a real, current, and immediate need to ensure the
10 safety of today’s Californians, and is narrowly tailored to affect only the most warlike
11 features of semiautomatic rifles, the AWCA is constitutional and should be upheld.

12 **A. The AWCA Bans a Subset of Semiautomatic Rifles Whose Military**
13 **Features Facilitate Criminal Mass Killings**

14 The Act is not an outright ban on the semiautomatic rifles that are the focus of
15 Plaintiffs’ case. Third Am. Compl. ¶ 47. Rather, the AWCA regulates certain available
16 add-on features that have been repeatedly used to perpetrate mass shootings, drive-by
17 shootings, and gang violence, among other criminal activities, in California’s cities. *See*
18 *Kasler v. Lockyer*, 23 Cal. 4th 472, 482–85 (2000); *see also, infra*, Section II.A.2. The
19 AWCA targets semiautomatic rifles that have been enhanced—through the addition of
20 detachable magazines, folding stocks, flash suppressors, pistol grips, or other features.
21 Cal. Penal Code § 30515(a). In so doing, the AWCA targets a subset of semiautomatic
22 rifles whose capacity and tendency to inflict mass casualties outweighs their usefulness
23 for lawful purposes.

24 **1. The Regulated Assault Rifles Are Uniquely Dangerous**

25 The AWCA regulates assault rifles by prohibiting semiautomatic versions of
26 weapons developed for and used by American armed forces (such as the AR-15, which
27 was developed by the U.S. military and “retains[s] the military features and
28 capabilities of the fully automatic M16 and AK-47,” both of which are currently used

1 by U.S. troops in combat), as well as other rifles that have the same features as those
2 known military-style models (*i.e.*, the Regulated Assault Rifles). *Kolbe v. Hogan*, 849
3 F. 3d 114, 124–25 (4th Cir. 2017) (en banc) (describing relationship among AR-15,
4 M16, and AK-47 and referring to folding and telescoping stocks, pistol grips, flash
5 suppressors, grenade launchers, and the ability to accept large-capacity magazines as
6 “military features”).

7 Such features distinguish military combat rifles and their semiautomatic
8 counterparts from standard sporting rifles, and are not “merely cosmetic”—they “serve
9 specific, combat-functional ends.” H. Rep. No. 103-489, at 18. The Regulated Assault
10 Rifles include features that enhance ammunition capacity, concealability, stability, and
11 control, making it easier for shooters to fire accurately without sacrificing rate of fire.
12 The “net effect of these military combat features is a capability for lethality—more
13 wounds, more serious, in more victims—far beyond that of other firearms in general,
14 including other semiautomatic guns.” *Id.* In fact, semiautomatic firing of military-
15 style weapons like the Regulated Assault Rifles is in many ways *more* effective than
16 automatic firing of the same weapons because it allows for more accuracy without
17 substantially sacrificing rate of fire. Department of the Army, *supra*, at 7–12 (stating
18 that “rapid semiautomatic fire” is “[t]he most accurate technique of placing a large
19 volume of fire on poorly defined targets or target areas such as short exposure,
20 multiple, or moving targets”).

21 Plaintiffs nevertheless argue that “there is nothing new or unusually dangerous
22 about semiautomatic, centerfire rifles with detachable magazines.” Third Am. Compl.
23 ¶ 6. That claim is demonstrably false. The Regulated Assault Rifles have detachable
24 magazines with higher round capacity, fire greater-velocity rounds, and have other
25 features that allow more “casual” handling by inexperienced shooters. Studies show
26 that today’s military-style semiautomatics are deadlier than ever, thanks to
27 technological innovations geared toward increasing body counts rather than personal
28 safety.

1 One such feature is the detachable magazine, which allows shooters to deplete
2 the ammunition in one magazine and quickly swap it for another, increasing the time
3 the shooter can continue firing without interruption and decreasing the time victims
4 have to escape. The lack of a fixed magazine also allows rifles to accommodate large-
5 capacity magazines, which can contain up to 100 rounds of ammunition. Detachable
6 magazines with greater ammunition capacity enable mass shooters to inflict
7 devastation because they limit the frequency with which a shooter must pause to
8 reload, eliminating the opportunity for potential victims to escape and for bystanders or
9 law enforcement to intervene. *See Ass’n of N.J. Rifle & Pistol Clubs v. Att’y Gen. N.J.*,
10 910 F.3d 106, 119–20 (3d Cir. 2018) (stating that “[w]eapon changes and reloading
11 result in a pause in shooting and provide an opportunity for bystanders or police to
12 intervene and victims to flee” and citing examples including the 2017 Las Vegas
13 shooting, the 2012 Newtown shooting, and 2011 Tucson shooting, among others);
14 *Kolbe*, 849 F.3d at 128 (citing Newtown, Tucson, and the 2012 Aurora shooting and
15 noting that firing 100 rounds using a ten-round magazine rather than a 100-round
16 magazine would typically allow six to nine additional opportunities for “bystanders or
17 law enforcement to intervene,” for “the shooter to have problems quickly changing a
18 magazine under intense pressure,” and for “potential victims to find safety”).

19 Indeed, studies have found that the use of magazines holding more than ten
20 rounds is “the factor most associated with high death tolls in gun massacres.” Louis
21 Klarevas, *Rampage Nation: Securing America From Mass Shootings* 215, 257 (2016).
22 The importance of pauses in a gunman’s shooting is underscored by the recent atrocity
23 at Marjory Stoneman Douglas High School in Parkland, Florida. The shooter there
24 used a weapon equipped with 30- to 40-round magazines. *See Marjory Stoneman*
25 *Douglas High School Public Safety Commission Report*, Fl. Dep’t of Law
26 Enforcement, at 31, 257 (Jan. 2, 2019), *available at*
27 <http://www.fdle.state.fl.us/MSDHS/CommissionReport.pdf>. At one point during the
28 massacre, eight students were able to flee during a 13-second pause while he retrieved

1 and inserted a new magazine. *Id.* at 31. If the shooter had been using an even larger
2 magazine (say with 100 rounds), those students may not have had that opportunity.

3 In addition, the velocity of bullets fired by weapons like the Regulated Assault
4 Rifles is three times those fired by a 9-millimeter handgun—as is the force with which
5 they hit. See Heather Sher, *What I Saw Treating the Victims from Parkland Should*
6 *Change the Debate on Guns*, The Atlantic Weekly (Feb. 22, 2018), available at
7 [https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-](https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/)
8 [from-parkland-should-change-the-debate-on-guns/553937/](https://www.theatlantic.com/politics/archive/2018/02/what-i-saw-treating-the-victims-from-parkland-should-change-the-debate-on-guns/553937/). Dr. Garen Wintemute of
9 the University of California, Davis Medical School testified before California’s
10 Committee of the Whole that “[w]hen a high velocity bullet enters the body, . . . it
11 starts to ‘tumble’ as it moves through the tissue[,] . . . greatly increasing the amount of
12 tissue which is damaged by direct contact with the bullet.” *Kasler v. Lockyer*, 23 Cal.
13 4th 472, 484 (2000). “Moreover, as this high-velocity missile travels through the
14 tissue, it sends out pressure waves.” *Id.* Dr. Wintemute explained: “We’ve all seen
15 pictures of airplanes breaking the sound barrier, and waves moving away from the
16 plane. The same thing happens as these bullets travel through tissue; these pressure
17 waves . . . create what is called a ‘temporary cavity’ behind the path of the bullet,
18 which may be 10 to 15 times—or even greater—the diameter of the bullet itself.” *Id.*
19 “As a result . . . these high-velocity missiles can damage or destroy organs, break
20 bones—including the femur, possibly the strongest bone in the body—without ever
21 touching them.” *Id.* Exit wounds can be as much as a foot wide. Sher, *supra*; Gina
22 Kolata & C.J. Chivers, *Wounds from Military-Style Rifles? ‘A Ghastly Thing to See’*,
23 N.Y. Times (Mar. 4, 2018), available at
24 <https://www.nytimes.com/2018/03/04/health/parkland-shooting-victims-ar15.html>.
25 Ultimately, a “low velocity bullet is like clipping the corner of your car” while a high-
26 velocity bullet is like “getting slammed by an 18-wheeler The high velocity bullet
27 totals you.” Alex Daugherty, *Mangled Tissue and Softball-Sized Exit Wounds: Why*
28 *AR-15 Injuries Are So Devastating*, Miami Herald (Feb. 24, 2018), available at

1 <https://www.miamiherald.com/news/local/community/broward/article201949054.html>.
2 While injuries from low-velocity bullets are generally survivable, injuries from the
3 high-velocity bullets fired by the Regulated Assault Rifles—“the same sort of horrific
4 injuries seen on battlefields”—are often not. Kolata and Chivers, *supra*. Were that not
5 enough, the destructive power of semiautomatic rifle fire—capable of breaking the
6 femur without touching it—increases the likelihood that bullets will speed through
7 walls and obstacles, which can increase casualties in a mass shooting and the risk of
8 striking bystanders to a criminal confrontation.

9 Finally, the additional features targeted by the AWCA in the Regulated Assault
10 Rifles (such as folding stocks, pistol grips, and flash suppressors) enhance
11 concealability, stability, and control, making the weapons easier for mass shooters to
12 operate without sacrificing the speed of fire. *See* Allen Rostron, *Style, Substance, and*
13 *the Right to Keep and Bear Assault Weapons*, 40 Campbell L. Rev. 301, 327 (2018).
14 The best evidence that these features are valuable to mass shooters is that, as described
15 *infra*, section II.A.2, they select them, over and over again.²

16 **2. The Regulated Assault Rifles Are Disproportionately Used by** 17 **Criminals and in Mass Shootings**

18 As might be expected, these dangerous copies of military firearms are most
19 popular with criminals, especially mass shooters. Rostron, *supra*, at 322–23; Elzerie
20 de Jager et al., *Lethality of Civilian Active Shooter Incidents With and Without*
21 *Semiautomatic Rifles in the United States*, 320 J. of Am. Med. Ass’n 1034, 1034 (Sept.
22 11, 2018). As of 1993, assault weapons “accounted for over eight percent of guns
23

24 ² Perpetrators of four of the five deadliest shootings in American history used
25 assault-style weapons incorporating or modified with one or more of these features.
26 The Las Vegas shooter used AR-15 style rifles with a forward grip; the Orlando
27 shooter used a Sig Sauer “concealable” assault weapon with a pistol grip and
28 collapsible stock; the Sandy Hook shooter used a Bushmaster Model XM15-E2S
semiautomatic rifle with a pistol grip; and the Sutherland Springs shooter used a
Ruger AR-556 rifle, which has a pistol grip and flash suppressor. *See High-*
Capacity Ammunition Magazines, Violence Policy Center (Feb. 15, 2019),
available at http://www.vpc.org/fact_sht/VPCshootinglist.pdf.

1 traced [by police], even though [they] constitute[d] only about one percent of all the
2 firearms in the United States.” Rostron, *supra*, at 322. Researchers have also found
3 that firearm purchasers with criminal histories were more likely to buy assault
4 weapons than purchasers without such histories and that those with more serious
5 criminal histories were even more likely to purchase assault weapons. Christopher S.
6 Koper, *An Updated Assessment of the Federal Assault Weapons Ban: Impacts on Gun*
7 *Markets and Gun Violence*, Nat’l Crim. J. Reference Serv. 17-18 (June 2004),
8 *available at* <https://www.ncjrs.gov/pdffiles1/nij/grants/204431.pdf> (citing Wintemute
9 et al., *Criminal Activity and Assault-Type Handguns: A Study of Young Adults*, Ann.
10 Emerg. Med. (July 1998)).

11 Most notably, these weapons have been used in many of the deadliest shootings
12 in United States history. In addition to the highest-casualty shootings in Las Vegas,
13 Orlando, Sandy Hook, and Sutherland Springs, assault rifles were used to perpetrate
14 the 2012 Aurora movie theater shooting, the 2015 San Bernardino shooting, and the
15 2018 Parkland high school shooting, among others. *Id.* at 330; de Jager et al., *supra*, at
16 1034. A recent study published in the Journal of the American Medical Association
17 found that 24.6% of active shooter incidents involved a semiautomatic rifle, which was
18 about 80% of all rifles used—by any measure, a far greater percentage than the
19 percentage of rifles in circulation that are semiautomatic. De Jager et al, *supra*, at
20 1034 (providing data). These incidents resulted in 82% more people wounded and
21 71% more killed than incidents that did not feature a semiautomatic rifle. *Id.* The
22 deadlier the shooting, the higher the likelihood that the shooter used a semiautomatic
23 rifle. *Id.*

24 Criminals (including mass shooters) choose these weapons both because they
25 are effective (in terms of the number and likelihood of casualties) and because the
26 military style of the weapons makes them particularly intimidating to intended victims.
27 Rostron, *supra*, at 329–30. That choice cannot be said to be merely “cosmetic,”
28 because it has a real and damaging effect. Intimidation not only allows shooters to

1 carry out their attacks with less chance of resistance, it means victims die in fear and
2 survivors are left traumatized. Fear has physical and psychological consequences:
3 post-traumatic stress disorders linked to mass shootings last longer and are more
4 debilitating for those survivors who were in closer proximity to the shooter and feared
5 for their lives. *See* Amy Novotney, *What Happens to the Survivors*, 49 Monitor on
6 Psychol. 36 (Sep. 2018), *available at* <https://www.apa.org/monitor/2018/09/survivors>.

7 What's more, experts have suggested that the military style can fuel a potential
8 shooter's violent fantasies and "embolden [him] to undertake a mass shooting spree he
9 otherwise might not have attempted." Rostron, *supra*, at 329. Weapons like the
10 Regulated Assault Rifles are chosen by perpetrators of mass shootings because they
11 are uniquely deadly—and they are uniquely deadly, in part, because they are chosen by
12 perpetrators of mass shootings.

13 **3. The Regulated Assault Rifles Are Not Suited for Sporting or Self-** 14 **Defense**

15 As described above, weapons like the Regulated Assault Rifles are very effective
16 at inflicting "more wounds, more serious, in more victims." H. Rep. No. 103-489, at 18.
17 For hunting and self-defense, however, they are no more effective and are in some ways
18 less useful than other weapons. For example, the last state to legalize the use of
19 semiautomatic rifles, like the AR-15, for big game hunting did so despite feedback that
20 hunters didn't need or want them for this purpose. Maddie Crocenzi, *Pa. Was the Last*
21 *State to Allow Hunting With an AR-15, and Hunters are Split*, York Daily Record (Feb.
22 6, 2018), *available at* [https://www.ydr.com/story/news/2018/02/06/ar-15-s-legal-](https://www.ydr.com/story/news/2018/02/06/ar-15-s-legal-hunting-pa-but-some-hunters-dont-want-them/1036386001/)
23 [hunting-pa-but-some-hunters-dont-want-them/1036386001/](https://www.ydr.com/story/news/2018/02/06/ar-15-s-legal-hunting-pa-but-some-hunters-dont-want-them/1036386001/). And firing a high-velocity
24 bullet that explodes bones and organs is no more useful for stopping a home intruder
25 than taking aim with a traditional firearm well-suited for this purpose. *See* Peter M.
26 Rhee et al., *Gunshot Wounds: A Review of Ballistics, Bullets, Weapons, and Myths*, 80
27 J. Trauma Acute Care Surg. 853, 865 (2016) (observing that law enforcement use
28 shotguns for short-range combat and self-defense because it is "easier to aim and hit a

1 target” and the shotgun, not an assault weapon, is arguably “the optimal weapon for
2 home defense” for less experienced shooters too).

3 Furthermore, though these weapons are not more useful in these contexts, they
4 certainly are more dangerous. Users are likely to fire more rounds (even when not
5 needed), bystanders are more likely to be hit, and bystanders who are hit are more likely
6 to be killed. *See supra* Section II.A.1. Compared to other available options, the
7 Regulated Assault Rifles do not appear better-suited for any lawful purpose.

8 **B. The AWCA Is a Reasonable and Tailored Response to a Compelling State**
9 **Interest in Public Safety**

10 The question of whether the AWCA is unconstitutional—and based on what
11 standard—turns in part on “whether the challenged law burdens conduct protected by
12 the Second Amendment.” *Fyock v. Sunnyvale*, 779 F.3d 991, 996 (9th Cir. 2015)
13 (internal quotation marks and citation omitted). If the law does burden such conduct,
14 the next inquiry is “what level of scrutiny should be applied” to determine whether the
15 law is nevertheless constitutional. *Id.*

16 The AWCA does not burden conduct protected by the Second Amendment.
17 “The Second Amendment right is ‘not a right to keep and carry any weapon
18 whatsoever in any manner whatsoever and for whatever purpose.’ *Id.* at 996 (quoting
19 *Heller*, 554 U.S. at 626). “Thus, longstanding prohibitions on the possession of
20 ‘dangerous and unusual weapons’ have uniformly been recognized as falling outside
21 the scope of the Second Amendment.” *Id.* at 997 (quoting *Heller*, 554 U.S. at 625).

22 The semiautomatic military-style rifles regulated by the AWCA have little (if
23 any) connection to the arms protected by the Second Amendment. They are far more
24 similar to those weapons “specifically designed for military use and . . . employed in a
25 military capacity”—the arms that the Supreme Court held in *District of Columbia v.*
26 *Heller* are not the “arms” protected by the Second Amendment’s “right to bear arms.”
27 554 U.S. 570, 581 (2008); *see also Kolbe*, 849 F.3d at 135–37 (“Because the banned
28 assault weapons and large-capacity magazines are clearly most useful in military

1 service, we are compelled by *Heller* to recognize that those weapons and magazines
2 are not constitutionally protected.”).

3 But even if the Court found that the AWCA implicates weapons understood to
4 be within the scope of the Second Amendment, the proper level of scrutiny under
5 which to evaluate the AWCA is intermediate scrutiny. To determine the appropriate
6 level of scrutiny, the court must consider “how closely the law comes to the core of the
7 Second Amendment right” and “how severely, if at all, the law burdens that right.”
8 *Fyock*, 779 F.3d at 998–99.

9 As for the first prong, the AWCA does not reach the core Second Amendment
10 right. The Second Amendment’s “core protection” is “the right of law-abiding,
11 responsible citizens to use arms in defense of hearth and home.” *Heller*, 554 U.S. at
12 634- 35. The AWCA in no way prevents “law-abiding, responsible citizens” from
13 generally keeping firearms in their home for self-defense. There is also no question
14 that the AWCA “does not affect the ability of law-abiding citizens to possess the
15 ‘quintessential self-defense weapon’—the handgun.” *Fyock*, 779 F.3d at 999.

16 To be sure, the Regulated Assault Rifles *could* be used for home or self-defense.
17 But the mere possibility that a weapon could be used for home or self-defense does not
18 immunize it from all state regulation. Under that rationale, “any type of firearm
19 possessed in the home would be protected merely because it could be used for self-
20 defense.” *United States v. Marzzarella*, 614 F.3d 85, 94 (3d Cir. 2010). The Second
21 Amendment does not deprive the legislature of the power to enact reasonable
22 regulations relating to weapons. *Id.*

23 Even if the AWCA implicated the core Second Amendment right, however, the
24 burden it imposes on that right is minimal. The law “bans only certain military-style
25 weapons and detachable magazines, leaving citizens free to protect themselves with a
26 plethora of other firearms and ammunition.” *Kolbe*, 849 F.3d at 138. Nor does the
27 AWCA categorically “ban ‘an entire class of arms,’” which “makes the restrictions
28 substantially less burdensome” as “numerous alternatives remain for law-abiding

1 citizens to acquire a firearm for self-defense.” *New York State Rifle & Pistol Ass’n,*
2 *Inc. v. Cuomo*, 804 F.3d 242, 260 (2d Cir. 2015). Rather, California has “ban[ned]
3 only a limited subset of semiautomatic firearms, which contain one or more
4 enumerated military-style features.” *Id.* Californians remain free to protect
5 themselves with a wide range of other firearms and ammunition, including
6 semiautomatic rifles with fixed magazines, and semiautomatic weapons with
7 detachable magazines that lack parts identified by the California legislature as adding
8 more danger. Thus, gun owners may also legally possess other types of rifles,
9 including semiautomatic ones.

10 Other courts have overwhelmingly agreed that targeted legislation implicating
11 semiautomatic assault weapons is entitled to, at most, intermediate scrutiny. *See, e.g.,*
12 *Kolbe*, 849 F.3d at 138–39 (statute banning certain military-style assault weapons was
13 subject to intermediate scrutiny under the Second Amendment); *New York State Rifle,*
14 804 F.3d at 258–61; *Heller v. District of Columbia*, 670 F.3d 1244, 1256–58 (D.C. Cir.
15 2011); *see also Ass’n of New Jersey Rifle & Pistol Clubs, Inc.*, 910 F.3d at 116–18
16 (statute restricting possession of large-capacity magazines was subject to intermediate
17 scrutiny under Second Amendment); *Fyock*, 779 F.3d at 998–99 (same). In fact, there
18 has been “near unanimity in the post-*Heller* case law” that, “when considering
19 regulations that fall within the scope of the Second Amendment, intermediate scrutiny
20 is appropriate.” *United States v. Torres*, 911 F.3d 1253, 1262 (9th Cir. 2019).

21 Because the AWCA does not closely affect “the core of the Second Amendment
22 right,” and does not “severely . . . burden[] that right,” *Fyock*, 779 F.3d at 998, the
23 strictest standard that could possibly be applied to the AWCA is intermediate scrutiny.

24 **1. The AWCA Furthers the Substantial Governmental Interest in**
25 **Reducing Gun Violence**

26 A weapons regulation survives intermediate scrutiny if it furthers a substantial,
27 significant, or important governmental objective and if the challenged regulation
28 reasonably fits that objective. While California has left unimpaired the individual right

1 of self-defense at the core of the Second Amendment, the State has reasonably
2 concluded that its compelling interest in reducing the frequency and lethality of gun
3 violence will be served by prohibiting the private possession of semiautomatic rifles
4 with detachable magazines and certain other military-style features. That conclusion is
5 supported by overwhelming evidence. The AWCA therefore readily withstands
6 intermediate scrutiny.

7 Intermediate scrutiny requires “(1) the government’s stated objective to be
8 significant, substantial, or important; and (2) a reasonable fit between the challenged
9 regulation and the asserted objective.” *Fyock*, 779 F.3d at 1000. The intermediate
10 scrutiny test is “not a strict one.” *Silvester v. Harris*, 843 F.3d 816, 827 (9th Cir.
11 2016). Intermediate scrutiny does not require “the least restrictive means of achieving
12 [the state’s] interest,” instead requiring only that the challenged law “promote[] a
13 substantial government interest that would be achieved less effectively absent the
14 regulation.” *Fyock*, 779 F.3d at 1000. The State may use “any evidence reasonably
15 believed to be relevant to substantiate its important interests,” *id.*, and “reasonable
16 inference[s]” from such evidence should be credited, *Mahoney v. Sessions*, 871 F.3d
17 873, 883 (9th Cir. 2017).

18 The California legislature’s stated objective is indisputably significant,
19 substantial, *and* important. The California legislature intended for its restrictions on
20 assault weapons to address “[t]he shooting incident in Stockton, the drive-by shootings
21 that have been going on in Southern California at an alarming rate, the number of
22 police officers who have been the victims of semi-automatic weapons, [] the ‘stats’
23 that now show the alarming group of arrests that are taking place, and [the fact that]
24 when the items are confiscated, on many, many occasions those items have turned out
25 to be semi-automatic weapons.” *Kasler*, 23 Cal. 4th at 482 (quoting Speaker of the
26 Assembly Willie L. Brown, Jr. on the purpose of the “extraordinary” session of the
27 California State Assembly . . . as a Committee of the Whole”).
28

1 To address the enormous threat to public safety posed by assault weapons,
2 including the Regulated Assault Rifles, the California legislature enacted the AWCA.
3 *See* Cal. Penal Code § 30505 (“The Legislature hereby finds and declares that the
4 proliferation and use of assault weapons poses a threat to the health, safety, and
5 security of all citizens of this state . . .”). California’s purpose in banning possession
6 of these weapons—promoting public safety and reducing gun violence—is without
7 question a substantial, indeed compelling, interest. *See, e.g., Fyock*, 779 F.3d at 1000
8 (explaining that the State’s interest in “promoting public safety,” “reducing violence
9 crime,” and “reducing the harm and lethality of gun injuries” are “substantial and
10 important government interests”); *Jackson v. City & Cty. of San Francisco*, 746 F.3d
11 953, 969 (9th Cir. 2014) (“It is self-evident that [the State’s] interest in reducing the
12 fatality of shootings is substantial.”).

13 And there plainly exists a reasonable fit between the AWCA and these important
14 State interests. The AWCA bans semiautomatic rifles with military features, including
15 detachable magazines; as demonstrated *supra* in Section A, these weapons are
16 particularly dangerous, military-style devices designed to inflict mass casualties.
17 Because the weapons banned by the AWCA pose real and immediate threats to public
18 safety, California’s stated interests in promoting public safety and reducing gun
19 violence “would be achieved less effectively” absent the AWCA. *Fyock*, 779 F.3d at
20 1000.

21 The reasonable fit between the AWCA and California’s substantial and
22 important interests is confirmed by both case law and empirical evidence. Courts have
23 upheld similar statutes regulating assault weapons under intermediate scrutiny,
24 recognizing that the Second Amendment allows States to enact reasonable restrictions
25 on the possession of semiautomatic rifles with military-style features. As these courts
26 have concluded, there is a reasonable fit between these assault weapons bans and the
27 government interest in reducing gun violence because semiautomatic rifles with
28 military-style features make mass shootings and criminal violence more lethal.

1 For example, in *New York State Rifle*, the Second Circuit upheld New York’s
2 and Connecticut’s assault weapons bans because they banned semiautomatic rifles
3 with “enumerated military-style features,” including the “flash suppressor, protruding
4 grip, and barrel shrouds,” and had “a capability for lethality—more wounds, more
5 serious, in more victims—far beyond that of other firearms in general, including
6 semiautomatic guns.” 804 F.3d at 262. The Second Circuit accordingly held New
7 York’s and Connecticut’s bans of these weapons were “substantially” related to the
8 States’ interests in mitigating the risk and lethality of mass shootings and survived
9 intermediate scrutiny. *Id.* at 262–63. Similarly, in *Kolbe*, the Fourth Circuit upheld
10 Maryland’s assault weapons ban, which prohibited semiautomatic weapons that
11 included “features designed to achieve their principal purpose—‘killing or disabling
12 the enemy’ on the battlefield,” such as flash suppressors, barrel shrouds, folding and
13 telescoping stocks, and pistol grips. 849 F.3d at 124–25, 139–40. In light of the
14 unique lethality of the banned assault weapons, the Fourth Circuit concluded that there
15 was “a reasonable, if not perfect, fit between the [ban] and Maryland’s interest in
16 protecting public safety.” *Id.* at 140–41.

17 In sum, the California Legislature has made the reasonable choice to prohibit
18 access to a subset of semiautomatic rifles that are extraordinarily dangerous and
19 facilitate mass killings. California’s stated interest of reducing the incidence and harm
20 of gun violence would be achieved less effectively absent the AWCA, which is
21 sufficient for the AWCA to be upheld under intermediate scrutiny.

22 **2. The AWCA Is Also Narrowly Tailored to Achieve a Compelling**
23 **Government Interest**

24 The AWCA need only satisfy intermediate scrutiny to pass constitutional
25 muster; courts apply strict scrutiny only to laws that *severely* burden the core Second
26 Amendment right to self-defense in the home, which, as previously explained, the
27 AWCA does not. *See, e.g., Torres*, 911 F.3d at 1262; *Kolbe*, 849 F.3d at 138.

1 However, even under a strict scrutiny standard, the AWCA must be upheld as
2 constitutional.

3 Strict scrutiny in the Second Amendment context requires that a statute be
4 “narrowly tailored to achieve a compelling governmental interest.” *Kolbe*, 849 F.3d at
5 133 (quoting *Abrams v. Johnson*, 521 U.S. 74, 82 (1997)). The AWCA meets even
6 this higher bar because its restrictions are narrowly tailored in furtherance of the
7 compelling interests the state of California has in reducing the frequency and lethality
8 of gun violence and in reducing the incidence and severity of mass shootings. *See*
9 *United States v. Salerno*, 481 U.S. 739, 750 (1987) (noting that “the Government’s
10 general interest in preventing crime” is compelling); *see also* 2015 California Senate
11 Bill No. 880, California 2015-2016 Regular Session.

12 California’s compelling interest in regulating semiautomatic assault rifles is easy
13 to see. Gun violence exacts an enormous toll on California’s families and
14 communities. “In recent years, California has experienced an average of 1,327 gun-
15 related homicides, 1,553 gun-related suicides, 4,284 nonfatal interpersonal shootings,
16 and 1,860 accidental shootings per year.” Giffords Law Center, *The Economic Cost of*
17 *Gun Violence in California*, [https://lawcenter.giffords.org/wp-](https://lawcenter.giffords.org/wp-content/uploads/2018/03/Economic-Cost-of-Gun-Violence-in-California.pdf)
18 [content/uploads/2018/03/Economic-Cost-of-Gun-Violence-in-California.pdf](https://lawcenter.giffords.org/wp-content/uploads/2018/03/Economic-Cost-of-Gun-Violence-in-California.pdf).
19 Semiautomatic assault rifles have had a particularly devastating role in gun deaths in
20 California. As the California Supreme Court explained, just a month before the
21 California legislature met to discuss the AWCA, Patrick Purdy drove to Cleveland
22 Elementary School in Stockton, California and used a Chinese-made semiautomatic
23 AK-47 to rake the school yard where 300 kindergartners to third graders were having
24 lunchtime recess. Five children, ages 6 to 9, died; one teacher and 29 children were
25 wounded. *Kasler*, 23 Cal. 4th at 483.

26 This was not the only recent incident. A man who told his wife he was “going
27 to hunt humans” opened fire in a McDonalds filled with about 45 patrons and
28 operating, among other weapons, a 9-millimeter Uzi submachine gun. *Id.* Using his

1 Uzi, “[h]e fired nearly hundreds of rounds. The gunfire was so heavy that police at
2 first assumed that more than one gunman was inside. . . . In all, of the 45 patrons in the
3 restaurant, [the shooter] killed 21 and wounded 15 others.” *Id.*

4 Then-Attorney General John Van de Kamp testified before the Committee of the
5 Whole that semiautomatic military assault rifles had become “the weapons of choice”
6 for gang members, and “[i]n Los Angeles, he said, it had ‘become fashionable among
7 hard-core members of the Crips gang to spray a stream of bullets in hopes of taking
8 down one rival gang member.’” *Id.* at 484. According to Van de Kamp, “the young
9 killers even have a phrase for [the collateral damage that may result]. They say, ‘I
10 spray the babies to the eighties.’” *Id.* Lieutenant Bruce Hagerty, a Los Angeles police
11 officer, described a gang shooting on Good Friday that killed children, teens, and the
12 elderly. *Id.* at 485. He said the site of the shooting resembled “a war scene.” *Id.*

13 In addition to the sheer carnage entailed, gun violence also has devastating
14 financial repercussions. “The 9,980 shootings that occur each year in California are a
15 serious drain on the state’s economy.” *Id.* The resulting costs in healthcare, law
16 enforcement and criminal justice, and lost income produce a gun violence tab of over
17 \$6.5 billion per year, much of which is picked up by the California taxpayers. *Id.*
18 For obvious humanitarian and economic reasons, the California legislature has a
19 compelling interest in reducing the incidence of firearms-related injuries and death.

20 The AWCA is the least restrictive means of furthering California’s interest in
21 mitigating the risk and lethality of mass shootings. For example, the California
22 legislature banned only those weapons that it found did not have a legitimate sporting
23 use. *See, e.g.*, 2015 California Senate Bill No. 880, California 2015-2016 Regular
24 Session (“[B]ullet button-equipped semi-automatic weapons have no legitimate use for
25 sport hunters or competitive shooters.”). The law prohibits only a fraction of available
26 firearms: those semiautomatic rifles with military-style features, including detachable
27 magazines, which facilitate rapid devastation of human life, and that the California
28 legislature deemed to be exceedingly dangerous.

1 In drafting the AWCA, “[t]he Legislature was . . . confronted with two
2 conflicting societal interests, both of which it recognized as legitimate—the interest of
3 all citizens in being protected against the use of semiautomatic weapons by criminals,
4 and the interest of some citizens in using semiautomatic weapons for hunting, target
5 practice, or other legitimate sports or recreational activities.” *Kasler*, 23 Cal. 4th at
6 488. “[T]o accommodate those conflicting interests,” the legislature found that it was
7 “the most effective way to identify and restrict a *specific class* of semiautomatic
8 weapons.” *Id.* (emphasis added). The State’s list approach is narrowly tailored—
9 rather than painting semiautomatic weapons or rifles with a broad categorical brush,
10 the legislature made feature-by-feature decisions and then determined for *each* other
11 firearm listed in the AWCA that it “has such a high rate of fire and capacity for
12 firepower that its function as a legitimate sports or recreational firearm is substantially
13 outweighed by the danger that it can be used to kill and injure human beings.” *Id.*; *see*
14 *also* Cal. Penal Code § 30505, referencing *id.* § 30510 (current version of statute cited
15 in *Kasler*). The AWCA is therefore a quintessential example of narrow tailoring.

16 In addition, the owners of weapons prohibited by the AWCA may remove the
17 features California has deemed particularly attractive to mass shooters without
18 significantly compromising their ability to use those weapons in lawful self-defense.
19 Indeed, Rupp concedes that a rifle owner need only modify the weapon to avoid the
20 penalties in the Act. *See* Third Am. Compl. ¶¶ 39–40. And, tellingly, Rupp does *not*
21 argue that, without those features, assault rifles owned by civilians will not fulfill Rupp’s
22 asserted benign purposes of hunting and self-defense. To be sure, modifying a rifle
23 requires some skill, or may require paying a gunsmith or buying a conversion kit. But
24 modification of any complex piece of equipment would be the same. Just because
25 modifying a car to avoid illegal features (such as tinted windows) may not be within the
26 capabilities of the average driver does not mean the legislature cannot ban tinted
27
28

1 windows. A reasonable person would take his car to a shop—reasonable gun owners
2 who seek to modify deadly weapons should do the same.³

3 Finally, Rupp argues that these modifications would result in a “fundamental
4 change to the nature of the firearm.” Third Am. Compl. ¶ 46. But that is exactly the
5 point. California wants gun owners to own and use guns suitable for hunting and self-
6 defense, not the firearms that have repeatedly fueled criminal activity such as mass
7 shootings and drive-by shootings—and, tragically, continue to do so across the country.
8 That interest is a compelling one and far greater than a gun owner’s interest in preserving
9 the “nature” of a dangerous weapon.

10 **3. This Court Should Defer to the Reasoned Decisions of the California**
11 **Legislature**

12 State legislatures must have the leeway to make informed, predictive judgments
13 about how to curb gun violence, and deference to legislative decision-making is
14 particularly appropriate in this realm. Gun violence is a complex problem, and while
15 many potential solutions have been proposed and pursued, experts disagree on the
16 most effective means of ameliorating the gun violence epidemic. States therefore
17 require the flexibility to adopt multiple approaches that take into account local and
18 state needs, as long as they leave intact the core right of self-defense. The Supreme
19 Court has accordingly emphasized that the Second Amendment “limits (but by no
20 means eliminates) [the States’] ability to devise solutions to social problems that suit
21 local needs and values.” *McDonald v. Chicago*, 561 U.S. 742, 785 (2010); *see also*
22 *Heller*, 554 U.S. at 636 (the Second Amendment provides state legislatures with “a
23 variety of tools for combating” gun violence); *Jackson*, 746 F.3d at 961 (localities

24
25 ³ Rupp balks at the cost of modifying an AR-15 rifle. *See* Third Am. Compl. ¶ 41.
26 But AR-15s are not cheap. And a gun owner can do a cost-benefit analysis to
27 determine whether it makes more sense to modify an existing gun or purchase a gun
28 that requires no modifications and is more suitable to hunting and self-defense than
one of the Regulated Assault Rifles. Rupp also argues that he is unsure whether
aftermarket products to replace banned features exists. *See* Third Am. Compl. ¶ 45.
Without any proof that such a market does not exist, Rupp has not met his burden
on this issue.

1 “must be allowed a reasonable opportunity to experiment with solutions to admittedly
2 serious problems”).

3 Even if, as Rupp alleges, the ban is not entirely perfect, *see* Third Am. Compl.
4 ¶ 50, “the Legislature was not constitutionally compelled to throw up its hands just
5 because a perfectly comprehensive regulatory scheme was not politically achievable,”
6 *Kasler*, 23 Cal. 4th at 487. Rather, the California legislature can take an incremental
7 approach to the complex problem of gun violence and judge the efficacy of its
8 regulations over time. Targeted steps to achieve incremental results are precisely the
9 type of reasonable regulations that are constitutionally permissible. *See, e.g., Mance v.*
10 *Sessions*, 896 F.3d 699, 708 (5th Cir. 2018) (upholding interstate handgun sales
11 restrictions under strict scrutiny and rejecting “underinclusivity” argument because “a
12 State need not address all aspects of a problem in one fell swoop; policymakers may
13 focus on their most pressing concerns” (internal quotation marks omitted)); *New York*
14 *State Rifle*, 804 F.3d at 263 (“[G]un control legislation need not strike all evils at the
15 same time to be constitutional.”). Indeed, an incremental approach is necessary for
16 states to keep up with innovations by gun manufacturers and sellers, some of which are
17 identified as dangerous or attractive to mass shooters only after months or even years
18 of widespread use. For example, states did not initially ban machine guns when they
19 were first invented and instead began to enact laws banning machine guns only once
20 these weapons were circulated widely and increasingly used to commit crimes. *See*
21 Robert Spitzer, *Gun Law History in the United States and Second Amendment Rights*,
22 80 L. & Contemp. Probs. 55, 67–68 (2017).

23 This Court should not second-guess California’s policy judgment. Legislatures
24 are “far better equipped than the judiciary to make sensitive public policy judgments”
25 about the risks of gun violence, the dangers of specific firearm features, and balancing
26 significant, protected interests. *Kachalsky v. Cty. of Westchester*, 701 F.3d 81, 97 (2d
27 Cir. 2012); *see also Pena v. Lindley*, 898 F.3d 969, 979–80 (9th Cir. 2018) (courts “must
28 allow the government to select among reasonable alternatives in its policy decisions”

1 and “lack the means” to resolve “a policy disagreement that the California legislature
2 already settled”). Those policy judgments should be reserved for the elected state
3 representatives in the legislature, who are directly accountable to the public for their
4 decisions. *See, e.g., Friedman v. City of Highland Park*, 784 F.3d 406, 412 (7th Cir.
5 2015) (the “best way to evaluate the relation among assault weapons, crime, and self-
6 defense is through the political process and scholarly debate”). Here, California found
7 a narrowly tailored solution that balanced its citizens’ Second Amendment rights and
8 the compelling need to address an urgent and deadly danger to its citizens. Its narrow
9 restrictions on certain especially dangerous semiautomatic rifles—precisely those
10 weapons that have repeatedly been selected by criminals for their value in boosting
11 casualty counts and intimidating victims—should be upheld.

12 III. CONCLUSION

13 For all the reasons stated above, we urge this Court to uphold California’s Assault
14 Weapons Control Act.

15
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Respectfully Submitted,

17
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